

Notice of Allowability

Application No.

09/813,592

Examiner

James R. Brittain

Applicant(s)

LUBERA ET AL.

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to applicant's communication of August 24, 2006.
2. ☒ The allowed claim(s) is/are 114-121; renumbered 1-8, respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: As applicant indicates in the remarks received August 23, 2005 on page 13, ¶2 as reproduced below:

Initially, Applicant notes that Claim 114 is directed to a fastener that includes a wing member, which terminates at a free end (opposite the end at which it is coupled to the generally U-shaped portion), the free end having a distal edge surface that is sloped relative to the flange of the fastener in a vertical direction so that a first lateral side of the distal edge surface is relatively closer to the flange in the vertical direction than a second opposite lateral side of the distal edge surface. Claims 115 through 121 depend from Claim 114.

While Kuffel (US 5759004, figures 1, 9 and 10) is the closest art of record and teaches a resilient clip 10 comprising a flange portion, an inserting portion 18 and a retaining portion 20 comprising a warped wing, there is no suggestion to modify the structure of the fastener of Kuffel so it includes the combination of the warped wing "being a twisted plane" (claim 114, line 11) with "a fastener aperture being formed into an end of each of the generally U-shaped portions opposite the flange, the fastener aperture being adapted to provide clearance for a threaded fastener that is inserted into the hole" (claim 114, lines 6-9) and the subject matter applicant identifies above. While applicant indicated in the communication received December 5, 2005 that claims 114 through 121 appear to be readable on the species of Group II as well (remarks, page 2, lines 8-9), the subsequently filed petition received March 9, 2006 directly contradicts the earlier statement and states that claims 112-121 do not appear to be generic and consequently, applicant does not have an opportunity to reunite claims drawn to the non-elected species (remarks, page 3, lines 17-19). The last statement by applicant is binding, claims 112-

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121 are not generic claims and are only of such scope as to cover the elected species, so the opportunity to reunite claims drawn to the non-elected species fails to exist in this case.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

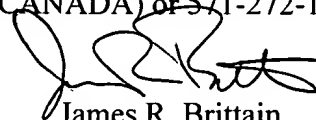
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James R. Brittain
Primary Examiner
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JRB